IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for mandates in the nature of Writs of Certiorari and Prohibition in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No : 660/2023

B.V. Shanaka Cooray,
No. 9/G/1, Sarvodaya Mawatha,
High level Road,
Godagama.

PETITIONER

Vs.

1. DFCC Bank PLC,
(PQ 233)
No. 73/5,
Galle Road,
Colombo 03.

2. Alpha Telecom Services (Pvt) Ltd.
No. 475/22, Lake Crescent,
Cotta Road,
Rajagiriya.

3. Thusith Karunarathne,
Licensed Auctioneer and Court Commissioner,
No. 182/3 (50/3)

Vihara Mawatha,

Kolonnawa.

RESPONDENTS

Before	:	**Hon. Rohantha Abeysuriya PC, J.(P/CA)**
	:	**Hon. K. Priyantha Fernando, J.(CA)**
Counsel	:	Faiszer Musthapha, P.C. for the Petitioner.
		Shammil Perera, P.C. for the Respondents.
Supported on	:	02.12.2025
Decided on	:	15.12.2025

K. Priyantha Fernando, J.(CA)

The Petitioner has invoked the writ jurisdiction of this court seeking, inter alia, a mandate in the nature of a writ of Certiorari quashing the resolution passed by the 1st Respondent bank on 26.07.2023 published in the Gazette marked as P22(b).

Pursuant to a Request dated 30th June 2021, the 1st Respondent Bank by its offer letter dated 12.08.2021 has granted an overdraft facility limited to Rs. 10,000,000 and an Import Line facility with a limit of Rs. 48,000,000. Those facilities have been granted to the 2nd Respondent Company collectively with the Petitioner whereby they were considered as Co-Borrowers.

The Petitioner acting as a Director of the 2nd Respondent Company and the 2nd borrower being referred to as a Co-Borrower has executed four Mortgages. As per the offer letter dated 12.08.2021 (P7[b]) it is stated that the securities provided by the Co-Borrowers shall continue to hold to secure all amounts owed by the Co-Borrowers to the 1st Respondent bank. Since, neither the Petitioner nor the 2nd respondent took any steps to regularize the facilities, the 1st respondent bank had taken steps to pass the Board Resolution dated 26.07.2023 and to fix the Public Auction to sell the properties Mortgaged which was to take place on 2nd November 2023.

In the meantime, the Petitioner had filed CHC 231/23 MR, in the Commercial High Court of Colombo on 27th October 2023 seeking inter alia Enjoining Orders and notices to the 1st Respondent. The Commercial High Court has refused to issue Enjoining Orders and refused even to issue notices on the Respondents.

The instant application filed before this Court on 31st October 2023 suppressed above material facts. Having supported the enjoining orders in the Commercial High Court and the Court reserving the Order on the same to be delivered on the 1st November 2023, the Petitioner filing this instant application on the 31st October 2023, is an abuse of the process of Court. The Petitioner is guilty of willful suppression and misrepresentation of material facts.

As legal grounds, the Petitioner has averred in the Petition the following:

1. A third-party property cannot be auctioned.

2. The Bank has failed to specify the precise amount the Bank aims to recover from each of the properties.

3. Due to the 1st Respondent's omission in specifying the outstanding amounts corresponding to each property and mortgage bond in the resolution, the Petitioner is denied the statutory right outlined in Section 10 of the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990.

4. Notice of Sale is null and void as the Bank has failed to identify the corpus of the impugned property to be mortgaged.

5. Interest calculated contained in the letter of demand (P19) is inconsistent with the resolution (P21) and the notices (P24[a]) to (P24[e]).

On the date fixed for the Argument, the Learned President's Counsel for the Petitioner has drawn the attention of this Court to following two judgments of this Court where this Court has dismissed similar applications filed against Banks.

1. <u>Liyanage Holdings (Pvt) Ltd v. Bank of Ceylon</u> - CA/WRIT 0419/19

2. <u>Kane Apparels (Private) Limited vs. People's Bank</u> - CA/WRIT/253/2022

In the 1st case, when dismissing the application, the Court has noted the Court's inability to inquire into the quantum that is recoverable. It is stated as follows:

> "*In S.K. Rahuman Maulana v People's Bank, CA 1012/2008 Writ, decided on 11.11.2013 the Petitioner impugns the resolution on the basis that the Respondent bank has failed to appropriate the payments made by the Petitioner. Anil Goonerathne J., after careful perusal of the pleadings submitted by both parties has decided that such matters of facts cannot be decided into in the absence of evidence being led. Goonerathne J. further drew his attention to the case of Ekanayake & Others vs. People's Bank - 2005 (1) SLR 94, in which it was held that "The facts disputed are on the quantum recoverable. The error on the calculation of quantum will not affect the jurisdiction of he Bank to act under Section 29D. The calculation of the sum recoverable by the Respondent Bank from the Petitioner is a matter of fact. In these proceedings, the court cannot ascertain*

the correctness of the sum recoverable from the Petitioners without evidence".

With regard to the suppression of material facts, it is stated in the same judgement as follows:

> "*Further, it is apt here to address the Respondent's contention that the Petitioner has not disclosed all the relevant facts to this Court, and that the Petitioner is therefore guilty of suppression of material evidence. We agree that the Petitioner has not disclosed to this court the case that is filed in the District Court of Aththanagalle against the 2nd Petitioner, in relation to one of the mortgaged properties to the bank.*"

In view of the above circumstances, I take the same view which has been affirmed in said two judgments. This Court would like to reiterate that jurisdiction vested in this Court to issue writs is a discretionary relief. His Lordship Justice Samayawardhena, in the case of ***Bettans Group of Companies (Pvt) Ltd. Vs. Lankaputhra Development Bank and others***, CA Writ/230/2015 decided on 10.07.2020, has stated that;

> "*The Petitioner cannot invoke the writ jurisdiction of this court as of right. It is discretionary relief; an act of grace on the part of the court. The fact that the loan was obtained and the Petitioner is in default is undisputed. By this application filed more than five years ago, the Petitioner has prevented the Bank from recovering its dues through parate execution-a quicker and faster procedure recognized by law. Banks are not charitable institutions; they are the cornerstones of economies. If a bank is prevented from taking such measures* as *it is entitled in law to take to protect its interests, the economy of the country would suffer…*"

For the foregoing circumstances, this application is dismissed without costs.

Judge of the Court of Appeal

Hon. Rohantha Abeysuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal